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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 358

IN THE MATTER OF

The Claim for Compensation under the Workmen's Compensation Law made by

WALTER E. BRAADT,

Appellant,

vs.

THE CITY OF NEW YORK,
Department of Sanitation (self-insurer),

Respondent,

vs.

WORKMEN'S COMPENSATION BOARD,

Respondent.

(W. C. B. No. 05994124)

APPELLANT'S BRIEF IN OPPOSITION TO MOTIONS TO DISMISS

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TABLE OF CONTENTS

	PAGE
STATEMENT	2
ARGUMENT—The constitutionality of Section 113, New York Workmen's Compensation Law presents a substantial constitutional question that has not heretofore been determined as it relates to a seaman injured in the course of his employment on navigable waters. This court should strike down the State's usurpation of a power which belongs exclusively within the Federal Maritime jurisdiction under Article III, Section 2, United States Constitution	3
CONCLUSION	11

Cases Cited

Braadt v. City of New York, et al., 21 App. Div. 2d 957, 251 N. Y. S. 2d 376 (3rd Dep't 1964), aff'd no opinion, 15 N. Y. 2d 875, 258 N. Y. S. 2d 413 (1965)	9
Calbeck, et al. v. Travelers Ins. Co., 370 U. S. 114	6, 10
Gahagan Construction Corp. v. Armao, 165 F. 2d 301 (1st Cir. 1948), cert. den., 333 U. S. 876	6
Garrett v. Moore-McCormack, Inc., 317 U. S. 239	9, 10
Grant Smith-Porter Shipping Co. v. Rhodes, 257 U. S. 469	6
Heagney v. Brooklyn Eastern District Terminal, 190 F. 2d 976, cert. den., 342 U. S. 920	5
Knickerbocker Ice Co. v. Stewart, 253 U. S. 149	5

PAGE

Lindgren v. U. S., 281 U. S. 38 5

Mach v. Penn. R.R. Co., 207 F. Supp. 233 (D. C. Pa. 1962) 10

Matter of Haglund v. Morse Drydock & Repair Co., 255 App. Div. 895 10

Meachem v. N. Y. Central R.R. Co., 8 N. Y. 2d 293 (1960) 5, 10, 11

Michigan Mutual Liability Co., et al. v. Arrien, et al., 344 F. 2d 640 (2nd Cir. 1965) 6

Panama R.R. Co. v. Johnson, 264 U. S. 375 ..... 4, 7, 8

Schellenger v. Zubik, 170 F. Supp. 92 (D. C. Pa. 1959) 5, 6

South Buffalo R.R. Co. v. Ahern, 303 N. Y. 545, aff'd, 344 U. S. 367 ..... 5, 10, 11

Southern Pacific Co. v. Jensen, 244 U. S. 205 5

Usiak v. N. Y. Tank & Barge Co., Inc., 299 F. 2d 808 (2nd Cir. 1962) 10

Washington v. Dawson & Co., 264 U. S. 219 5

W. J. McCahan Sugar Refining & Molasses Co. v. Stouffel, 41 F. 2d 651 (3rd Cir. 1930) 5

United States Constitution Cited

Article III, Section 2 ..... 3, 4, 8, 9

Statutes Cited

N. Y. Workmen's Compensation Law, Sec. 113 .... 3, 5, 7-9

28 U.S.C., Rule 16 (3) 1

Sec. 1257 (2) 11

PAGE

33 U.S.C., Sec. 902 (3) (Longshoremen and Harbor Workers Act) 7

45 U.S.C., Sec. 51 (Federal Employees Liability Act) 5

46 U.S.C., Sec. 688 (Jones Act) 2, 6-8, 10

Other Authority Cited

Vol. 68, Part 5, Congressional Record (69th Congress, 2nd Session), pp. 5402, 5403, 5410, 5411, 5414.... 7

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—against—

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WORKMEN'S COMPENSATION BOARD,

Respondent.

(W.C.B. No. 05994124)

APPELLANT'S BRIEF IN OPPOSITION TO MOTIONS TO DISMISS

Appellant, seaman, Walter E. Braadt, pursuant to Rule 16 (3) of the Revised Rules of this Court, files this brief in opposition to appellees' motions to dismiss the appeal herein on the alleged ground that the appeal does not present a substantial constitutional question.

Statement

There is no dispute to the facts that on September 20, 1959 Walter E. Braadt was injured in the course of his employment as a deck hand aboard the city's vessel, a scow, then in navigable waters of Fresh Kills Creek, Staten Island, New York. At the time of the occurrence the scow was in tow and caused to come in violent collision with other vessels, throwing Braadt off balance and causing him to sustain serious spinal and related disabling injuries.

Braadt's employer, The City of New York, placed him under New York Workmen's Compensation by filing a report of this injury with the Board on October 23, 1959.

Braadt accepted Compensation payments in reliance upon his employer's misrepresentation that the accident occurred in a non-navigable waterway.

Subsequently, in the summer of 1962, Braadt learned for the first time that Fresh Kills Creek where he was injured was in fact a navigable body of water. Accordingly, he then brought an action in the U. S. District Court for the Southern District of New York claiming the benefit of the Jones Act, Title 46 U.S.C. §688 and under the General Maritime Law for injuries received by him as a result of this accident.

On October 11, 1962, at a hearing before the Workmen's Compensation Board appellant's attorneys requested that testimony should be taken by the referee on Braadt's status as a *seaman* at the time of accident.

The referee refused to take such testimony claiming the Board was never put on notice as to this issue.*

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* As early as February 29, 1960, Braadt wrote a letter to the Workmen's Compensation Board requesting an immediate hearing to determine whether his claim was a maritime or compensation matter. See p. 15 of the Transcript of the Record on Appeal.

On December 10, 1962 appellant's attorneys via letter to the Board objected to the referee's decisions and awards, requesting that they be vacated because of complete absence of local jurisdiction—as appellant was proceeding under the applicable federal provisions of the Maritime Law.

On March 27, 1963 at a hearing before the Workmen's Compensation Board, request was again made that testimony be taken on the question of appellant's classification as a seaman. (See Minutes, W.C.B., dated March 27, 1963, pp. 39, 40 of Transcript of Record on Appeal). At this time respondent, City of New York, conceded that at the time the accident occurred, the vessel was in fact in navigable waters. However, the Board refused to take such testimony holding that even as a "seaman" Braadt had waived his General Maritime Law rights and remedies by utilizing the Board's machinery. (See Jurisdictional Statement, Appendix A, p. 12 and Minutes, W.C.B. dated March 27, 1963, pp. 38-42, Transcript of Record on Appeal.)

ARGUMENT

The constitutionality of Section 113, New York Workmen's Compensation Law presents a substantial constitutional question that has not heretofore been determined, as it relates to a seaman injured in the course of his employment on navigable waters. This court should strike down the State's usurpation of a power which belongs exclusively within the Federal Maritime jurisdiction under Article 111, §2, U. S. Constitution.

(1)

The General Martime Law was received and incorporated into the laws of this nation through the constitutional provision which extends to the Judiciary of the United States

"* * * all cases of admiralty and maritime jurisdiction * * *". Article 111, Section 2, Constitution of the United States.

The Supreme Court in *Panama Railroad Co.* v. *Johnson*, 264 U. S. 375, explained the meaning of this Constitutional provision as follows:

> "Such a law or system of law existed in colonial times and during the Confederation, and only was applied in the adjudication of admiralty and maritime cases. It embodied the principles of the General Maritime Law, sometimes called the law of the sea, with modifications and supplements adjusting it to conditions and needs on this side of the Atlantic. The framers of the Constitution were familiar with that system and proceeded with it in mind. Their purpose was not to strike down and abrogate a system, but to place the entire subject—its substantive as well as procedural features—under national control because of its intimate relation to navigation and interstate and foreign commerce. In pursuance of that purpose, the constitutional provision was framed and adopted. Although containing no express grant of legislative power over the substantive law, the provision was regarded from the beginning as implicitly investing such power in the United States. Commentators took that view; Congress acted on it, and the courts, including this Court, gave effect to it * * *. *After the Constitution went into effect, the substantive law theretofore enforced was not regarded as superseded, as being only the law of the several States, but as having become the law of the U. S.*—subject to power in Congress to alter, qualify or supplement it as experience or changing conditions might require. When all is considered, therefore, there is no room to doubt that the power of Congress extends to the

entire subject and permits of the exercise of a wide discretion. *But there are limitations which have come to be well recognized. One is that there are boundaries to the Maritime Law and admiralty jurisdiction which inhere in those subjects and cannot be altered by legislators, as by excluding a thing falling clearly within them or including a thing falling clearly without* * * *" (Italics supplied).

With respect to waiver of federal rights and remedies, the appellees rely on the Federal Employees Liability Act case of *Southern Buffalo R.R. Co.* v. *Ahern,* 303 N. Y. 545.

However, appellant urges that in the instant case the basic constitutional issues squarely before this Court are: (1) Whether the *means* (use of the machinery of the N. Y. State Workmen's Compensation Board) whereby the instant seaman's *dispute* was *settled* violates public policy and, (2) Whether the inherent boundaries to the federal maritime law and admiralty jurisdiction has been unconstitutionally altered by Section 113 of the New York State Workmen's Compensation Law.

These issues were not considered, let alone determined in *South Buffalo R.R. Co.* v. *Ahern,* 344 U. S. 367; *Meachem* v. *N. Y. Central R.R. Co.,* 8 N. Y. 2d 293 (1960); nor in *Heagney* v. *Brooklyn Eastern District Terminal,* 190 F. 2d 976, *cert. den.* 342 U. S. 920.

The State does not have jurisdiction over personal injuries sustained by seamen while in the course of their employment on navigable waters, *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205; *Knickerbocker Ice Co.* v. *Stewart,* 253 U. S. 149; *Washington* v. *Dawson & Co.,* 264 U. S. 219; *Lindgren* v. *U. S.,* 281 U. S. 38; *W. J. McCahan Sugar Refining & Molasses Co.* v. *Stouffel,* 41 F. 2d 651 (3rd Cir. 1930); *Schellenger* v. *Zubik,* 170 F. Supp. 92 (D. C. Pa.

1959). It has long been and still is basic law that the parties cannot confer jurisdiction over the *subject matter* to the State where the State cannot constitutionally have such power.

The issues presented here are not degrees of exclusiveness of jurisdiction, but the jurisdictional power of the State over the subject matter itself in the first instance.

The Court below based its jurisdiction over the subject matter on the theory that there was a *maritime but local* exception to the General Maritime Law which could confer jurisdiction on the State over seaman's personal injury claims suffered while in the course of his employment on navigable waters. *Grant Smith-Porter Shipping Co.* v. *Rhodes,* 257 U. S. 469. See Appendix B, page 15 of the Jurisdictional Statement. However, *Grant Smith-Porter Shipping Co.* v. *Rhodes, supra,* and all cases in which the *maritime but local* doctrine was applied, involved harbor workers or longshoremen. This *martime but local* doctrine has never been applied and does not apply to a "seaman's case." *Gahagan Construction Corp.* v. *Armao,* 165 F. 2d 301 (1st Cir. 1948) *cert. den.,* 333 U. S. 876.

With the passage of the Longshoremen's and Harbor Workers Act, the *maritime but local* doctrine is in serious disrepute, *Calbeck, et al.* v. *Travelers Ins. Co.,* 370 U. S. 114; *Michigan Mutual Liability Co., et al.* v. *Arrien et al.,* 344 F. 2d 640 (2nd Cir. 1965), serves no useful purpose, unnecessarily depreciates from the inherent federal constitutional maritime power and attempts to create, with respect to seaman's cases, a confusing judicial "twilight zone". This attempt should be rejected.

With respect to personal injuries sustained by seamen, Congress has stated that there exclusive remedies shall be the Jones Act, 46 U. S. C. §688, and General Maritime Law.

Congress has also stated that seamen shall not be entitled to Federal Workmen's Compensation, expressly excluding them from the Longshoremen's and Harbor Workers Act, 33 U. S. C. §902 (3); Vol. 68, Part 5, Congressional Record (69th Congress, 2nd Session) pp. 5402, 5403, 5410, 5411 and particularly p. 5414.

While the wording of the Jones Act, 46 U. S. C. §688 is "permissive", the language of the Act does not permit a seaman to elect to pursue the remedy provided in the Workmen's Compensation Law. A Seaman has no remedy in State or Federal Workmen's Compensation.

The phrase "may, at his election", which appears in the Jones Act, 46 U. S. C. §688, was explained in *Panama R.R. Co .v. Johnson,* 364 U. S. 375 as follows:

> "*Rightly understood, the statute neither withdraws injuries to seamen from the reach and operation of Maritime Law, nor enables a seaman to do so.* On the contrary, it brings into that law new rules drawn from another system and extends to injured seamen a right to invoke, at their election, either the relief accorded by old rules or that provided by the new rules. *The election is between alternatives accorded by the Maritime Law, as modified, and not between that law and some non-maritime system.*" (Italics supplied.) *Panama R.R. Co.* v. *Johnson,* 264 U. S. at p. 388.

It is immaterial in the instant case whether Section 113 of the N. Y. State Workmen's Compensation Law is "permissive" or "coercive" with respect to seamen's General Maritime Law and Jones Act rights and remedies as Workmen's Compensation Laws were unknown at the time of the ratification of the U. S. Constitution, and since then have never been part of the "maritime system". As such,

State Workmen's Compensation Laws for seamen are in conflict with Article III, Section 2 of the U. S. Constitution, as they are clearly without the boundaries and ambit of the admiralty and maritime jurisdiction, which was exclusively granted to the Federal Government. *Panama R.R. Co.* v. *Johnson, supra.*

While it is true that the Maritime Law is not stagnant and grows as changing times and needs dictate, there is no public policy which would require or necessitate *permissive* Workmen's Compensation for seaman, as seaman's rights now under the Jones Act and the General Maritime Law, as interpreted by this Court, are far more liberal than Workmen's Compensation Acts. With respect to seaman there is no void in the existing maritime law whereby a seaman would be remediless if injured in course of his employment. There is no need to create a *martime but local* exception for their protection.

(2)

The seaman has a singular status in Maritime Law. His contractual dealings with his employer are as carefully watched by the Courts as though he were a minor or a young heir. He is, in contemplation of the Maritime Law, a ward of the Admiralty Courts.

The application of the waiver provisions of Section 113 of the Workmen's Compensation Law effectuates a release of the seaman's maritime rights and remedies. With respect to releases given by seaman, this Court has held that the Maritime Law goes far beyond questions of fraud and misrepresentation (which exists in the instant case) and holds that it is the burden of the employer, the one who sets forth the release to show that it was executed freely, without deception and without coercion. The employer has the burden of proof of showing that the seaman was not over-

reached—that he signed the release with full understanding of his rights. *Garrett* v. *Moore-McCormack Co., Inc.*, 317 U. S. 239.

The Courts below held that the waiver and release of appellant-seaman's maritime rights and remedies was effectuated pursuant to Section 113 of the Workmen's Compensation Law when the:

> "* * * parties . . . utilized the board's machinery at a series of hearings resulting in a series of awards as well as payment and acception of these awards * * *"

New York State Workmen's Compensation Board memorandum of decision filed June 5, 1963, WCB case number 05994124 (See Appendix A, Jurisdictional Statement, p. 12) and See *Braadt* v. *The City of New York and Workmen's Compensation Board*, 21 App. Div. 2d 957; 251 N. Y. S. 2d 376 (3rd Dep't 1964), *aff'd, no opinion* 15 N. Y. 2d 875, 258 N. Y. S. 2d 413 (1965). (See Appendix B, Jurisdictional Statement, pp. 13, 14).

Contrary to the Maritime Law, Section 113 of the New York State Workmen's Compensation Law does not require any proof to be presented by the seaman's employer that: (1) The waiver and release be executed freely by the seaman; (2) That there was no deception or coercion and; (3) That the seaman fully understood his rights and remedies.

The absence of these basic General Maritime Law requirements in the execution of releases and the waiver of the seaman's maritime rights and remedies renders the application of Section 113 of the Workmen's Compensation Law repugnant to Article III, Section 2 of the U. S. Constitution.

The record shows that appellant was doing traditional seaman's work at the time of his accident, *cf. Usiak* v. *N. Y. Tank & Barge Co., Inc.*, 299 F. 2d 808 (2nd Cir. 1962); *Mach* v. *Penn R.R. Co.*, 207 F. Supp. 233 (D. C. Pa. 1962); and that he was overreached by his employer.

Under the circumstances of overreaching, acceptance of compensation payments cannot be considered a release, compromise and/or accord and satisfaction of appellant's rights under the Jones Act and General Maritime Law. *Garrett* v. *Moore-McCormack Co., Inc.*, 317 U. S. 239.

It is clear that the validity of the "compensation agreement" raises a Federal question to be resolved by Federal law. *cf. South Buffalo R.R. Co.* v. *Ahern*, 344 U. S. 367.

It is impossible to have a full and fair compromise of a Jones Act and General Maritime Law case which is tainted by fraud and overreaching of the seaman. Such a "compromise" clashes with the General Maritime Law and Jones Act, as well as all equitable principles. *Cf. South Buffalo R.R. Co.* v. *Ahern, supra; Garrett* v. *Moore-McCormack, supra.*

It should be noted that in the *Ahern, supra; Meachem, supra;* and *Matter of Haglund* v. *Morse Drydock & Repair Co.*, 255 App. Div. 895, cases,—one of the most important considerations of the Court was the finding of an equitable estoppel against the employer preventing it from raising the issue of jurisdiction after the Statute of Limitations had run against any claim which the employee's estate could make against his employer under the Federal Statutes.

Here, unlike the above cases, there is no prejudice to any of the parties. The appellant has a Jones Act and General Maritime Law (including maintenance and cure) suit presently pending on the Trial Calendar of the U. S. District Court, Southern District of New York.

The payments made to appellant under the Compensation Act of course would be credited to the City against the amount appellant is entitled to receive under the maritime law. *Calbeck et al.* v. *Travelers Ins. Co.*, 370 U. S. 114.

In addition, the *Ahern* and *Meachem* principles cannot be applied because there cannot be a waiver unless there is an intentional relinquishment of a *known* right. *Meachem*, 169 N. E. 2d at p. 917. The appellant did not know of his rights under the General Maritime Law until approximately two and a half years after his accident, when he immediately instituted a Jones Act and General Maritime Law suit.

CONCLUSION

The rulings and decision of the Appellate Division affirmed without opinion by the Court of Appeals clearly brings this case within the jurisdictional provision of Title 28 U. S. C. §1257 (2) conferring appellate jurisdiction on this Court.

The federal constitutional questions presented are of first impression to this Court, are determinative factors of the inherent boundaries of the General Maritime Law and as such, are of so substantial a nature as to require plenary consideration, with briefs on the merits and oral argument for their resolution by this Court.

Dated: New York, N. Y.,
August 26, 1965.

Respectfully submitted,

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